

THIS DISPOSITON IS NOT
CITABLE AS PRECEDENT OF THE TTAB 9/1/99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

NBC Fourth Realty Corp.
v.
Martin Industries, Inc.

Opposition No. 102,409
to application Serial No. 74/677,803
filed on May 22, 1995

Thomas V. Smurzynski of Lahive & Cockfield, LLP
for NBC Fourth Realty Corp.

J. David Wharton of Shook, Hardy & Bacon L.L.P.
for Martin Industries, Inc.

Before Sams, Bottorff and McLeod, Administrative Trademark
Judges.

Opinion by Bottorff, Administrative Trademark Judge:

On May 22, 1995, applicant filed intent-to-use
application Serial No. 74/677,803, by which it seeks to
register the mark GRILL MAXX, in typed form, on the
Principal Register for goods identified in the application
as "barbecue grills." Applicant has disclaimed the
exclusive right to use GRILL apart from the mark as shown.

Opposer filed a timely notice of opposition to registration of applicant's mark, alleging priority of use and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. §1052(d), as the ground for opposition. Specifically, opposer alleges in the notice of opposition that opposer:

is licensor to one of the nation's leading off-price retailers, which operates a chain of over 500 retail department stores in forty-six states under the tradename and service mark T.J. MAXX. The T.J. MAXX stores sell a variety of brand name apparel and accessories, footwear, jewelry, domestics, kitchen accessories and giftware, some under the trademark T.J. MAXX.

(Notice of Opposition, paragraph 1.) Opposer also alleges that it owns federal registrations of the marks T.J. MAXX, GET THE MAXX FOR THE MINIMUM, THE MAXIMUM FOR THE MINIMUM, and THE MAXX FOR THE MINIMUM.¹ Finally, opposer alleges

¹ Opposer's eight pleaded registrations, status and title copies of which opposer submitted during its testimony period and which show that the registrations are subsisting and are owned by opposer, are as follows:

Registration No. 1,495,462, of the mark T.J.MAXX (stylized) for "retail department store services." Issued July 5, 1988; affidavits under Sections 8 and 15 accepted.

Registration No. 1,199,126, of the mark T.J.MAXX (differently stylized) for "retail department store services." Issued June 22, 1982; affidavits under Sections 8 and 15 accepted. The registration includes the statement "T.J. Maxx is not the name of any living individual."

that applicant's mark, when applied to applicant's goods, so resembles opposer's previously-used marks and trade name as to be likely to cause confusion, to cause mistake, or to deceive.

Registration No. 1,637,243, of the mark T.J. MAXX (in typed form) for "retail department store services." Issued March 5, 1991; affidavits under Sections 8 and 15 accepted. The registration includes the statement "'T.J. MAXX' does not identify a particular living individual."

Registration No. 1,189,627, of the mark THE MAXIMUM FOR THE MINIMUM (in typed form) for "retail department store services." Issued February 9, 1982; affidavits under Sections 8 and 15 accepted.

Registration No. 1,403,563, of the mark GET THE MAXX FOR THE MINIMUM (stylized) for "retail department store services." Issued July 29, 1986; affidavits under Sections 8 and 15 accepted.

Registration No. 1,690,657, of the mark THE MAXX FOR THE MINIMUM (in typed form) for "retail department store services." Issued June 2, 1992; Office records show that affidavits under Sections 8 and 15 accepted.

Registration No. 1,871,345, of the mark T.J. MAXX (in typed form) for "athletic bags, purses, handbags, pocketbooks, wallets, umbrellas, travel bags, and luggage." Issued January 3, 1995. The registration includes the statement "'T.J. MAXX' is not the name of a particular living individual."

Registration No. 1,871,415, of the mark T.J. MAXX (in typed form) for "clothing for women, men, children and infants; and beachwear, bathing suits, blouses, coats dresses, footwear, gowns, headwear, hosiery, jackets, lingerie, neckwear, sleepwear, pants, shirts, shorts, suits, sweaters, tops, underwear, and vests." Issued January 3, 1995. The registration includes the statement "'T.J. MAXX' is not the name of a particular living individual."

Applicant filed an answer by which it denied the allegations of the notice of opposition which are essential to opposer's Section 2(d) claim.

Opposer and applicant filed briefs on the case, and opposer filed a reply brief. No oral hearing was requested. The evidence of record consists of the pleadings; the file of the opposed application; status and title copies of opposer's eight pleaded registrations, submitted by opposer under Notice of Reliance;² the discovery deposition (and exhibits thereto) of Karen Coppola, vice-president of marketing for opposer's T.J. MAXX retail store division, taken by applicant during the discovery period and submitted by opposer during opposer's testimony period pursuant to the parties' stipulation;³ status and title copies of twelve third-party registrations, submitted by applicant under Notice of Reliance;⁴ and opposer's answers to certain of applicant's discovery requests, submitted by applicant under Notice of Reliance.

The following relevant facts have been established by the evidence of record. Opposer NBC Fourth Realty Corp. is a subsidiary of The TJX Companies, Inc. Opposer holds title

² See *infra* at footnote 1.

³ See Trademark Rule 2.120(j)(2).

⁴ It was unnecessary to submit status and title copies of these third-party registrations; soft copies of PTO records would have sufficed. See Trademark Rule 2.122(e) and TBMP §703.02(b).

to the pleaded marks, and licenses their use by The TJX Companies, Inc. and by T.J. Maxx, which is a division of The TJX Companies, Inc. (Coppola deposition at 8-9.)

HomeGoods, an off-price retailer of products for the home, is another division of The TJX Companies, Inc. (*Id.* at 9, 19.)

T.J. Maxx stores are "off-price" department stores "which offer fashions for the family and the home at 20 to 60 percent off regular department store prices nationwide." (*Id.* at 10.) T.J. Maxx stores had annual sales in 1996 of approximately \$3 billion, approximately seventy percent of which was attributable to clothing sales. (*Id.* at 14.) In the fiscal year preceding opposer's December 1996 response to applicant's first set of interrogatories, opposer spent approximately \$40 million on marketing, of which the largest portion was for television advertising. (Opposer's response to applicant's Interrogatory No. 9.) There are approximately 590 T.J. Maxx stores located throughout the United States. (Opposer's response to applicant's Interrogatory No. 6.)

When asked to describe the goods sold at T.J. Maxx stores, Ms. Coppola confirmed the accuracy of the allegation in paragraph 1 of the notice of opposition that T.J. Maxx stores sell "brand name apparel and accessories, footwear,

jewelry, domestics, kitchen accessories and giftware."
(Coppola deposition at 12.) She further described the above-referenced "domestics" as "sheets, towels, linens, comforters, blankets, aprons, place mats, things along that line," and the "kitchen accessories" as "kitchen gadgets to gourmet cookware to stemware to silverware, that whole genre of kitchen items." (*Id.* at 13.)

When she was asked whether T.J. Maxx has plans to expand into additional product categories, she answered:

Well, we have opened three years ago a concept store called -- or a store called "T.J. Maxx and More." The first name that it was under was T.J. Megastores, but they have now been branded "T.J. Maxx and More." And that really combines a T.J. Maxx store and a sister company of ours, HomeGoods, which provides an array of home products. And what we've done with the T.J. Maxx and More stores is bring those two concepts together under the same roof under the one banner of "T.J. Maxx and More."

(*Id.* at 19.) There is no evidence in the record as to how many "T.J. Maxx and More" stores exist, or as to the sales and advertising figures for such stores.

When she was asked what sort of goods "might be sold by bringing in the HomeGoods," Ms. Coppola answered:

Okay. It is a lot of stuff, a 50,000 square foot store. Let's go through it. Certainly picture frames -- well, going through the seasonality, large oriental rugs, accent furniture, storing containers, appliances, kitchen accessories, gourmet cookware,

baskets, home accent crystal, dinnerware services, silverware and china."

(*Id.* at 22-23.)⁵ She further described "accent furniture" as follows: "It is end tables, it is bar stools, it's chairs, it's baker's racks, it's hammocks, it's umbrella tables, it's beach chairs, it's outdoor chairs and furniture, that season of the year." (*Id.* at 23.) She further described "appliances" as "coffee makers, blenders, bread makers, electric frying pans, grills, mixers, ice cream makers, hair dryers, curling irons, electric curlers." (*Id.* at 23-24.)

With respect to "grills," Ms. Coppola stated as follows:

We have sold small barbecue grills. We have an outdoor/indoor kitchen-type grill thing. I don't know what to call that. It's used for - - there is an indoor and there is an outdoor grill. The indoor grill grills. You make a waffle on it, electric grill pans. The outdoor grills are what you would know them to be, barbecue grills.

(*Id.* at 24.) She further stated that she knows that T.J. Maxx has sold "some Weber grills" (*id.* at 25), but that she, as marketing director for TJX Companies, Inc., has never researched the barbecue grill industry, nor, to her

⁵ It is unclear from the deposition transcript whether the "50,000 foot store" Ms. Coppola refers to is the HomeGoods store or the T.J. Maxx and More store.

knowledge, has anyone else at T.J. Maxx performed such research. She stated that she does not know the average purchase price of barbecue gas grills, the characteristics of the average grill purchaser, nor how many outdoor grills T.J. Maxx has sold, either in terms of gross sales or units. (*Id.* at 26-27.)

Applicant's Interrogatory Nos. 24-26 requested information regarding T.J. Maxx's sales of outdoor barbecue grills for the last three years. Opposer's December 1997 responses to those interrogatories reveal that all such sales occurred in 1995, when T.J. Maxx had \$3,600 in gross sales resulting from the sale of approximately forty-eight Weber brand outdoor barbecue grills. Opposer has admitted that it has not mentioned barbecue gas grills in its radio, television or print advertising in the past five years. (Opposer's response to applicant's Request for Admissions No. 8.)

Opposer also has admitted that it has not used T.J. MAXX as a brand name or private label name for barbecue gas grills. (Opposer's response to applicant's Request for Admissions No. 7.) In her deposition, when Ms. Coppola was asked, generally, whether T.J. Maxx sells products under a "T.J. Maxx" brand name or label, she stated that T.J. Maxx does not "put our label inside any garment, if that's what you're asking." (Coppola deposition at 50). However, she

also stated: "Well, I should say all products sold inside of our store, whether they be Anne Klein or a picture frame, they all have a label with "T.J. Maxx" on them which is the price ticket." (*Id.* at 51).

Priority is not an issue in this case, in view of opposer's submission of status and title copies of its registrations. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108,110 (CCPA 1974). Thus, the issue to be determined with respect to opposer's Section 2(d) claim is whether confusion is likely to result from applicant's use of applicant's mark on the goods identified in the application. Our determination as to whether a likelihood of confusion exists is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

To the extent that opposer's opposition to registration of applicant's GRILL MAXX mark for "barbecue grills" is based on opposer's ownership of its Registration No. 1,189,627, of the mark THE MAXIMUM FOR THE MINIMUM for "retail department store services," we do not hesitate to find against opposer and in favor of applicant. We find that the marks GRILL MAXX and THE MAXIMUM FOR THE MINIMUM are too dissimilar to support a finding of likelihood of

confusion, especially as applied to the goods and services identified in the application and registration. *Cf. Kellogg Co. v. Pack 'Em Enterprises, Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991). Our reasons for deciding that applicant's mark is not confusingly similar to opposer's other registered marks, discussed later in this opinion, apply *a fortiori* when we compare applicant's mark GRILL MAXX to opposer's mark THE MAXIMUM FOR THE MINIMUM.

Likewise, to the extent that opposer's opposition is based on opposer's ownership of its Registration Nos. 1,871,345 and 1,871,415, which are of the mark T.J. MAXX for, respectively, various clothing items and various accessory items, we find that the goods identified in those registrations are too dissimilar and unrelated to applicant's "barbecue grills" to support a finding that confusion is likely to result from the parties' use of their respective marks thereon. *Cf. Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 222 USPQ 741 (Fed. Cir. 1984).

The real dispute in this case, therefore, is whether applicant's mark GRILL MAXX, for "barbecue grills," is likely to be confused with opposer's trade name and registered mark T.J. MAXX, or with opposer's registered marks GET THE MAXX FOR THE MINIMUM, and/or THE MAXX FOR THE MINIMUM, all used in connection with "retail department store services."

We turn first to a consideration of the commercial relationship between the parties' respective goods and services. Because applicant's identification of goods is not limited as to trade channels, we must assume that applicant's barbecue grills move in all normal trade channels for such goods. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). We must construe the words "retail department store services" in opposer's recitation of services in accordance with their ordinary meaning, and we take judicial notice that Webster's Ninth New Collegiate Dictionary (1990), at page 340, defines "department store" as "a store selling a wide variety of goods and arranged in several departments."

We are not persuaded that retail department stores are among the normal trade channels for barbecue grills, or that barbecue grills are otherwise related to retail department store services. There is no evidence in the record from which we can conclude that retail department stores normally offer barbecue grills for sale, that purchasers normally would expect retail department stores to carry such goods, that retail department stores normally sell barbecue grills under their own house marks or brand names, or that purchasers normally would expect barbecue grills to be sold under a department store's house mark or brand name; nor are these matters of which it would be appropriate for us to

take judicial notice. *Distinguish, e.g., F.I. Tripi Co., Inc. v. R.H. Cosmetics Corp.*, 196 USPQ 126 (TTAB 1997).

Indeed, the only evidence in the record to support opposer's argument that retail department stores are among the normal trade channels for barbecue grills is opposer's assertion that it sold approximately forty-eight Weber brand barbecue grills in its own stores in 1995.⁶ However, opposer's 1995 sales of barbecue grills appear on this record to have been a one-time phenomenon, de minimis both in terms of units sold (less than one unit for every ten T.J. Maxx stores) and percentage of sales (\$3600 out of \$3 billion in total annual sales). Apparently, neither opposer's vice-president of marketing nor any other of opposer's officers or employees is knowledgeable about the barbecue grill industry or market, a fact from which it must be inferred that barbecue grills are not among the goods normally sold in opposer's department stores.

In short, the record does not support opposer's argument that retail department stores are among the normal trade channels for barbecue grills. Nor are we persuaded by opposer's argument that applicant's "barbecue grills" are related to opposer's "retail department store services" by

⁶ We have given little probative weight to Ms. Coppola's testimony regarding opposer's sales of "an outdoor/indoor kitchen-type grill thing." See *supra* at p. 7. That item, which Ms. Coppola suggests might be used to cook a waffle, does not

virtue of the fact that opposer's stores sell items such as outdoor furniture and casual dinnerware, which might be used in conjunction with barbecue grills. Rather, we conclude on this record that the commercial relationship between barbecue grills and retail department store services is tenuous, at best, a fact which weighs against a finding of likelihood of confusion in this case.

We turn next to a determination of whether or not applicant's GRILL MAXX mark and opposer's marks T.J. MAXX, THE MAXX FOR THE MINIMUM, and GET THE MAXX FOR THE MINIMUM, when viewed in their entireties, are similar in terms of appearance, sound, connotation, and overall commercial impression. We find that they are not.

The only point of similarity between applicant's mark and opposer's marks is the presence in each of the marks of the term MAXX. In applicant's mark GRILL MAXX and in opposer's marks THE MAXX FOR THE MINIMUM and GET THE MAXX FOR THE MINIMUM, the term MAXX clearly would be viewed as a misspelling of, or substitution for, the word "max," which itself is an abbreviation of the word "maximum."⁷ This conclusion is further borne out by comparison of the essentially identical connotations of opposer's pleaded

appear to be substantially related to barbecue grills, and thus is of little relevance to this case.

⁷ We take judicial notice that Webster's Third New International Dictionary - Unabridged (1976), at p. 1396, defines "max" as, inter alia, "abbr maximum."

registered marks GET THE MAX FOR THE MINIMUM, on one hand, and THE MAXX FOR THE MINIMUM and GET THE MAXX FOR THE MINIMUM, on the other hand.

The words "maximum" and "max," and by extension the term "maxx" as it is used in applicant's mark GRILL MAXX and opposer's marks THE MAXX FOR THE MINIMUM and GET THE MAXX FOR THE MINIMUM, have a somewhat laudatory connotation. We take judicial notice that Webster's Ninth New Collegiate Dictionary (1976), at pp. 1396-1397, defines "max" as, inter alia, "[short for maximum] a perfect score (as in a scholastic recitation) or complete success," and defines "maximum" as "the greatest quantity or value attainable in a given case" and "the highest point or degree." Moreover, many of the third party registrations⁸ made of record by

⁸ The third party registrations made of record by applicant are:

Reg. No. 1,825,345: KITTY LITTER MAXX (stylized) for "cat box filler";

Reg. No. 1,688,662: MAXX for "general purpose sorbent granules, powder, flexible pads, tubular socks, pillows, sheets, rolls and elongated blankets for controlling and absorbing oil, grease, and fluids for domestic, commercial and industrial use";

Reg. No. 1,661,817: THE BLACK MAXX for "exercise equipment, namely a belt and harness with hand straps and boots for strengthening and toning muscles by resistance training";

Reg. No. 1,752,699: THUNDER MAXX for "toy vehicles and ride-on toy vehicles";

Reg. No. 1,780,763: DELLA-MAXX for "all purpose liquid cleaning preparations";

Reg. No. 1,781,617: TRIM-MAXX for "tea";

applicant show, in the same way that dictionary definitions might be used to show,⁹ that the term MAXX is often used in marks as a substitute for the word "max," and for laudatory effect.

In view of the laudatory nature of the term MAXX, we find that applicant's mark GRILL MAXX is not confusingly similar to either of opposer's slogan marks THE MAXX FOR THE MINIMUM and GET THE MAXX FOR THE MINIMUM. The marks are dissimilar in terms of their appearance, sound, connotation and commercial impression, inasmuch as opposer's marks are multi-word, unitary slogans, and applicant's mark is not. The mere presence in each of the marks of the laudatory term MAXX is an insufficient basis for finding that these marks,

Reg. No. 1,806,657: ULTRA MINI MAXX for "full line of cleaning preparations, combination cleaning/disinfecting/deodorizing preparations and polishing preparations all for household, institutional and commercial use";

Reg. No. 1,874,557: AMERICAN TRAC MAXX for "fender mounted radios primarily used for agricultural and industrial purposes";

Reg. No. 1,857,454: MUSCLE MAXX for "nutritional supplement for athletes";

Reg. No. 1,939,195: MAXX for "hand tools, namely, ice scrapers with snow brush attached";

Reg. No. 1,920,053: KITTY LITTER MAXX (typed form) for "cat box filler"; and

Reg. No. 1,953,089: MORTGAGE MAXX for "mortgage brokerage services."

⁹ See, e.g., *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984).

when viewed in their entirety, are similar in terms of their overall commercial impressions.

Turning next to a comparison of applicant's mark GRILL MAXX and opposer's mark T.J. MAXX, we likewise find that the marks are dissimilar. Again, the only common element in the respective marks is the term MAXX; the marks otherwise are dissimilar in terms of appearance and sound. As discussed above, MAXX has a somewhat laudatory connotation as used in applicant's mark and as applied to applicant's goods, and the commercial impression created by applicant's mark is that of a "maximum" grill, i.e., a maximum-quality grill, a maximum-capacity grill, etc.

In opposer's T.J. MAXX mark, by contrast, the term MAXX loses most or all of its laudatory connotation and, instead, strongly connotes a surname. Indeed, the overall commercial impression created by opposer's mark is clearly that of an individual's name, i.e., an individual with the initials T.J. and the surname MAXX. No other reasonable construction or interpretation of opposer's mark is apparent on this record.¹⁰ Applicant's mark GRILL MAXX carries no such connotation and creates no such commercial impression.

¹⁰ In this regard, we note that opposer's predecessor Newton Buying Corp., during prosecution of the application which matured into opposer's pleaded Registration No. 1,199,126, requested that the following statement be entered into the application record: "T.J. Maxx is not the name of any living individual. Rather, it is the name of a fictitious [sic] person, is entirely fanciful, and was made up by Newton Buying Corp." See Exhibit 7 to the

We are not persuaded that the term MAXX dominates the commercial impressions created by both marks, as opposer argues. Even if we were to assume that MAXX dominates applicant's mark because the only other element of applicant's mark is the generic term GRILL, we nonetheless cannot conclude on this record that MAXX, rather than T.J., is the dominant feature of opposer's mark. Rather, T.J. MAXX appears to be a unitary expression connoting an individual's name, and neither T.J. nor MAXX is necessarily dominant in the commercial impression created by the mark.

Indeed, on the basis of this record, it would not be unreasonable to conclude that T.J., and not MAXX, might be perceived as the dominant feature of opposer's mark. Opposer apparently refers to itself as "T.J." or "T.J.'s," as well as "T.J. MAXX." See, e.g., Ms. Coppola's deposition testimony at page 27, where, in referring to opposer's T.J. MAXX stores, she says, "[t]he average customer at T.J. is primarily a female," and "I think that's the reason they walk into T.J." See also Exhibit 4 to Ms. Coppola's deposition, which she identified (at page 21) as a T.J. MAXX

Coppola deposition. We have considered this fact, i.e., that opposer's predecessor made the above-quoted statement during prosecution of its application, as being "merely illuminative of shade and tone in the total picture confronting" us on the question of the commercial impression created by opposer's T.J. MAXX mark. See *Interstate Brands Corporation v. Celestial Seasonings, Inc.*, 576 F.2d 926, 198 USPQ 151, 154 (CCPA 1978).

store's direct mail card, and which bears the heading "What's New At T.J.'s This Week?"¹¹

For the reasons discussed above, we find that when the marks are viewed in their entireties in terms of appearance, sound, connotation and overall commercial impression, applicant's mark GRILL MAXX is dissimilar, rather than similar, to any and all of opposer's marks T.J. MAXX, THE MAXX FOR THE MINIMUM, and GET THE MAXX FOR THE MINIMUM.

We have carefully considered all of the arguments with respect to the other *du Pont* evidentiary factors, most of them made by applicant, and conclude that none of those factors significantly affects the outcome of this case. We are not persuaded by applicant's argument that the relevant purchasers in this case are necessarily sophisticated as to trademarks or immune to source confusion. Nor are we persuaded that the third-party registrations made of record by applicant establish that MAXX is a weak or diluted mark;

¹¹ We also note that opposer, as plaintiff in Opposition No. 94,915, contended that its T.J. MAXX mark and the applicant's T.J. BAILEY mark were similar, and argued in support of that contention that, "[b]earing in mind the standard prohibition against dissection of marks in evaluating similarity, and to the rule that the first part of a mark is the most prominent, the marks are similar," and that it was "quite likely that a significant portion of potential clothing store customers would remember either" T.J. BAILEY or T.J. MAXX "as T.J. 'something'." See opposer's responses to applicant's Requests for Admissions Nos. 5 and 6, and Exhibit 8 to the Coppola deposition. The fact that opposer made these arguments is a fact which we may consider as "merely illuminative of shade and tone in the total picture confronting" us on the question of whether "T.J." or "MAXX" is the dominant feature in the commercial impression created by opposer's mark. See *Interstate Brands, supra*.

those registrations are not evidence that the marks depicted therein are in use or that they are familiar to consumers. We have considered the third-party registrations only insofar as they aid us in determining the connotation of the term MAXX, as discussed above. The alleged absence of actual confusion is entitled to little weight in this case, given the fact that applicant's application is an intent-to-use application.

Opposer, citing its \$3 billion in annual sales, its \$40 million in annual advertising expenditures, the fact that it has used the mark since 1977, and the fact that it operates 590 stores nationwide, argues that its T.J. MAXX mark is a famous, well-known mark which is entitled to a wide scope of protection. Applicant contests opposer's claim of fame, contending that the above-referenced facts do not, in themselves, establish the fame of opposer's mark. On this record, we conclude that although opposer's T.J. MAXX mark probably is famous in the field of retail apparel sales, opposer has not established that T.J. MAXX, or any other of opposer's marks, is a famous mark for the various non-apparel items opposer sells, much less that any of opposer's marks has achieved fame for goods as far afield from apparel as barbecue grills. Accordingly, while we have considered the fame of opposer's mark, we find that the fact of such

fame is of less importance to our likelihood of confusion analysis in this case than it would have been if the goods and services involved had been more closely related.

After having considered all of the evidence pertaining to the relevant likelihood of confusion evidentiary factors, we conclude that opposer has failed to establish the existence of a likelihood of confusion in this case. In view of the fact that the commercial relationship between applicant's goods and opposer's services appears on this record to be tenuous, at best, applicant's mark simply is not sufficiently similar to opposer's pleaded marks and trade name to warrant a finding that source confusion is likely to result from the parties' concurrent use of their respective marks on or in connection with their respective goods and services.

Decision: The opposition is dismissed.

J. D. Sams

C. M. Bottorff

L. K. McLeod

Administrative Trademark Judges
Trademark Trial and Appeal Board